June 8, 2017

Comment to the FCC: Notice of Proposed Rulemaking 17-60, “In the Matter of Restoring Internet Freedom,” WC Docket No. 17-108

I am writing to respectfully oppose the proposal outlined in the Notice of Proposed Rulemaking 17-60, "Restoring Internet Freedom.” The FCC acted correctly to protect internet freedom when it adopted the Title II Order, thereby classifying broadband service providers as telecommunications services, not information services. I should remind the Commission at this point that the Title II Order was adopted after an extraordinary and overwhelming public comment period three years ago (in response to Notice of Proposed Rulemaking 14-28), the result of which was an unprecedented consensus among consumers, citizens, entrepreneurs, and big businesses of all political stripes that Title II was necessary to maintain net neutrality, freedom of speech, and the entrepreneurial dynamism of the internet. Ending the public-utility regulation of the internet and adopting a light-touch regulatory framework, as this Notice proposes to do, would threaten the fundamental freedoms that have made the internet so valuable and important to American values and the American economy.

Although it may have made sense in 1996 to classify internet service providers (ISPs) as an “information service,” it no longer does so today. The technologies on the internet and people’s use of the internet today are fundamentally different today than in 1996, and the definitions of “information service” and “telecommunications service” from the Telecommunications Act of 1996 are inadequate for today’s internet. In Section III.A.1, the Notice of Proposed Rulemaking emphasizes how ISPs seem to fit the definition of “information service,” but it fails to discuss how ISPs also fit the definition of a “telecommunications service.” To the contrary, its analysis of this issue in paragraph 29 represents either willful ignorance or a grotesque attempt to mislead the public about the internet: simply because a user doesn’t enter an IP address like they dial a phone number does not mean they don’t know “where” they are going when they go online. Further discussion of this definitional issue in paragraph 30 follows a similarly tortured logic.

While ISPs theoretically fit both definitions, in practice, citizens increasingly use third party providers like Facebook, Google, Youtube, Twitter, and eBay for their “generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information.” Such organizations are most certainly appropriately classified as “information services.” By contrast, broadband providers like AT&T and Comcast primarily serve the function of “the offering of telecommunications for a fee.” From the perspective of users—and citizens and businesses alike are increasingly both consumers and producers of internet content, thanks to the proliferation of Web 2.0 technologies—broadband ISPs function more as telecommunications services, while other content providers and social media platforms on the internet are the “information services.”

If the FCC were to reclassify ISPs as information services, it would open the door to monopolistic practices that would stifle innovation, creativity, and free speech. For example, if Google became an ISP, it would be able to stifle competition by privileging access to its own content. Such a possible level of vertical integration in the industry would hurt entrepreneurs, would be counterproductive for economic growth, and would pose threats to freedom of speech.

Regulating ISPs like the telecommunications services they are is needed to maintain internet freedom for users and actual "information services."

As for the "Light Touch Regulatory Framework" proposed in Section IV, strong regulation of ISPs will become increasingly necessary as our economy and society increasingly move online. Again, the internet is substantially different than it was two decades ago, and it is not unreasonable to expect it to change again in the near future. As corporate profits increasingly rise and fall on the basis of internet traffic, it is unreasonable to expect ISPs to police themselves. Moreover, given that most Americans have very few (if any) choices over their ISPs, consumers may not have the option to punish anti-competitive or unethical business behavior by switching to a competing provider. For this simple reason, strong regulations over ISPs are necessary to ensure that commerce and speech on the internet remain free and unfettered.

The Internet Conduct Standard should be maintained because it serves as a protection for freedom of speech. Eliminating the Standard would allow ISPs to restrict access to third party information services that it disagrees with ideologically or that might compete with it commercially; thus, the Standard serves as a deterrent to ISPs who might otherwise engage in anti-competitive practices or try to restrict users' access to content and information. Similarly, the bright line rules banning blocking, throttling, and paid prioritization, along with the "enhanced" transparency rule, are vital safeguards that protect users from such unethical practices by ISPs, and they should be maintained. Although the FCC is clearly concerned that there is little quantitative evidence for the need for such regulations, I count that as a success—not a reason to change. The fact that I eat a lot of fruits and vegetables but have never had a heart attack does not mean that my diet has been ineffective. As both my body and the internet age and mature, the need for such preventive measures will be increasingly important.

In sum, I wholly oppose the recommendations in the Notice of Proposed Rulemaking to reclassify ISPs as information services and to adopt a "light touch" regulatory framework. From beginning to end, the proposal confuses the fact that the overwhelming majority of content that people produce and consume on the internet is made possible by information services, via a telecommunications service. Although it is possible for a broadband ISP to provide information services, there are only a small number of ISPs, compared with millions of third party information services. If the FCC were to proceed with its proposal to reclassify broadband ISPs as information services, the freedoms of those millions of information services, along with the freedoms of billions of internet users, would be jeopardized. This proposal does not "restore" internet freedom; it defiles it.

Sincerely,

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